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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,043	02/17/2004	Elizabeth Bates	SF0977XB	1489
28/098 MERCK C/O DNAX LEGAL DEPARTMENT 901 CALIFORNIA AVENUE PALO ALTO, CA 94304	7550 08/20/2010		<div>EXAMINER</div> <div>DAHLE, CHUN WU</div>	
			<div>ART UNIT</div> <div>1644</div>	<div>PAPER NUMBER</div>
			<div>NOTIFICATION DATE</div> <div>08/20/2010</div>	<div>DELIVERY MODE</div> <div>ELECTRONIC</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/780,043	Applicant(s) BATES ET AL.
Examiner CHUN DAHLE	Art Unit 1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED July 27, 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 7, 9, 18, and 32-34
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Chun Dahle/
Examiner, Art Unit 1644

Continuation of 5. Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, first paragraph, written description, new matter, 101, non-statutory subject matter, 35 U.S.C. 102(e), and 103(a).

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 7, 9, 18, 25, and 32-34 stand rejected under 35 U.S.C. 102(a) as being anticipated by Adema et al. (WO 98/24906, cited in IDS filed 02/17/04) as evidenced by Bost et al. (Immunol. Invest. 1988; 17:577-586, reference listed on PTO-892 mailed on February 22, 2006) and Bendayan (J. Histochem. Cytochem. 1995; 43:881-886, reference listed on PTO-892 mailed on February 22, 2006) for reasons of record.

Applicant's arguments filed on July 27, 2010, have been fully considered but have not been found persuasive.

Applicant argues that Adema et al. does not disclose the claimed polypeptide consisting of SEQ ID NO:6. Applicant asserts that since all pending claims required SEQ ID NO:6, Adema et al., lacking SEQ ID NO:6, cannot anticipate the instant claims.

This is not found persuasive for following reasons:

Contrary to applicant's assertion, it is noted that the instant claims are drawn to an antigen-antibody complex comprising a purified antibody that specifically binds an FDF03-S1 polypeptide consisting of the amino acid sequence of SEQ ID NO:6. The FDF03-S1 polypeptide consisting the amino acid sequence of SEQ ID NO:6 encompasses a type I transmembrane protein belonging to Ig superfamily expressed strongly in T cells and PBL (e.g. see pages 7-8 of the specification). It appears that the claimed FDF03-S1 consisting of amino acid sequence of SEQ ID NO:6 is present on T cell or PBL surface. Given the high degree of sequence homology between the prior art polypeptide of FDF03 of SEQ ID NO:2 and the instant FDF03-S1 consisting of SEQ ID NO:6 (80.4%), the prior art antibody would specifically bind the instant SEQ ID NO:6 for reasons stated in the prior Office Actions. In addition, Adema et al. teach parenteral administration of the antibody (e.g. see page 4 and 22-45 or see discussion on page 5 of the prior Office Action mailed on May 27, 2010). Thus, the prior art antibody when administered parenterally would inherently form complex to the natural occurring FDF03-S1 polypeptide in vivo, in term, the prior art would anticipate the instant antigen-antibody complex.

Therefore, applicant's arguments have not been found persuasive..